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4859	7590	01/22/2009	EXAMINER			
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FIFTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619				UNDERWOOD, DONALD W		
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/520,499

Filing Date: July 18, 2005

Appellant(s): BROOKS ET AL.

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Oliver E. Todd, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/22/08 appealing from the Office action  
mailed 03/04/08.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

Note independent claims 1, 23 and 25 are mapped in appendix X.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,257,177	Bach, et al.	10-1993
5,058,752	Wacht, et al.	10-1991

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4,042,135	Pugh, et al.	8-1977
4,822,237	Meyer, et al.	4-1989

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-9, 12, 13, 16-18, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pugh, et al. in view of Bach, et al.

Pugh contains a pivoted telescopic lifting arm 13, a load handling implement 7, 8, 9, etc., supports, i. e., wheels and hubs, hydraulic actuators 15, 17 and 26 to pivot the boom, extend the boom and pivot the load handling implement, respectively. Pugh also contains a controller, strain gauges and a buzzer to warn of unstable operation as overturning by preventing pivoting and extension of the boom and shuts down the system if no corrective action is taken. See Pugh, et al., column, 1, lines 60-68 and column 2, lines 1-26, and column 3, lines 6-46 and column 4, lines 1-4. Pugh does not teach slowing down the flow to the actuators to avoid an abrupt stop.

Bach, et al. contains a controller to send signals to gradually reduce movement of the work equipment to reduce vibration and harsh stresses and to provide an alarm and eventual stopping of the controls. The controller sends signals to the valves using them as proportioning valves. See Bach column 4, lines 66-68 and column 5, lines 1-30 and column 10, lines 61-68 and column 11, lines 1-14.

It would have been obvious to use portioning values for each actuator in Pugh to slowly restrict the system in Pugh instead of abruptly stopping the system in view of the above noted teaching in Bach.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pugh, et al. in view of Bach, et al. as applied to claim 18 above, and further in view of Meyer, et al..

It would have been obvious to provide a load leveling arrangement in Pugh as modified by Bach to prevent the load from tipping in view of the teaching in Meyer (figure 6).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pugh, et al. in view of Bach, et al. as applied to claim 1 above, and further in view of Wacht, et al.

It would have been obvious to provide for transient changes in the controller of Pugh as modified by Bach in view of the teaching in Wacht, column 5, lines 15-21.

#### **(10) Response to Argument**

Appellants' arguments on pages 7-11 of the brief should be viewed together with the following remarks. Appellants' position that Pugh does not contain a system that controls a valve to slow the movement of the boom as the tipping threshold is approached is correct. However, Pugh does teach sending a signal as the tipping threshold is approached and shutting down the system if no corrective action is taken. See Pugh, column 1, lines 60-68, column 2, lines 3-10 and column 20-43. Applicants' position that neither reference is concerned with the inertia of a load on a moving arm when movement is stopped is incorrect. See Appellants' brief, page 9, last two lines. Bach is concerned with slowing down an arm to avoid vibrations on the machine and unnecessarily harsh stresses by controlling a valve. See Bach column 4, last line and column 5, lines 1-4. Bach is also concerned with the vehicle turning over. See Bach,

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column 5, lines 17-30. Bach controls his valves by sending signals from the controllers. See Bach, column 10, lines 67 and 68 and column 11, lines 1-14. It is the concern of Pugh and Bach to prevent a vehicle from turning over and Bach's teaching to slow down actuators by using signals from controllers that provides the motivation to modify Pugh in view of Bach as set forth in the above rejections.

Appellants' comments on page 10 of the brief regarding claim 18 should be viewed together with the fact that the modification of Pugh in view of Bach requires all actuators to be controlled to slow down movement. Note Pugh, column 2, lines 11-16, desires to prevent lowering and/or extension of the boom.

Appellants' remarks on page 11 of the brief do not disagree with the teaching in Meyer and Wacht or the modifications made in view of these teachings.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Donald Underwood/

Primary Examiner, Art Unit 3652

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Saul Rodriguez /SJR/

Marc Jimenez

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/Marc Jimenez/

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